80-1671

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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1980

JAMES M. HAZELIP,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the indictment should have been dismissed upon the ground that the defendant was the victim of an impermissible discriminatory prosecution, where the evidence showed that only members of "tax protest" organizations were being prosecuted for violation of 26 U.S.C. Sec. 7205, and that the probable basis for singling the defendant out was his membership in such an organization, and the exercise of his First Amendment rights to speak, associate and exchange ideas freely with other persons.

2. Whether, under the circumstances of this case, where the defendant was entitled to at least 16 withholding "exemptions" on his Form W-4 (employee's withholding exemption certificate), which would have effectively "exempted" him from withholding, a law which criminally punishes him for claiming on that form to be "exempt" from withholding, is unconstitutionally vague, as applied to this defendant, or that it is fundamentally unfair to hold him liable. (26 U.S.C. Secs. 3402 and 7205)

3. Whether "income" received in the form of Federal Reserve Notes or their legal equivalent, is taxable to a cash basis taxpayer, even though the notes are not redeemable in "dollars" of silver or gold.

INTERESTED PARTIES

There are no parties to this proceeding other than those listed in the caption.

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1980
No. _____

JAMES M. HAZELIP,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit, affirming petitioner's conviction, is unreported, and is reproduced at Appendix A. The denial of the petition for rehearing is unreported, and is reproduced at Appendix B.

JURISDICTION

The judgment of the court below, affirming petitioner's conviction, Appendix A, was entered on December 29, 1980. A timely petition for rehearing was filed and was denied on January 29, 1981, Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Fifth Amendment:

No person shall be held to answer for a captital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Internal Revenue Code of 1954, Title 26 U.S.C.:
Section 7205: Fraudulent withholding exemption certificate or failure to supply information.

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty

provided by section 6682), upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year or both.

Section 3402 (a): Income tax collected at source

(a) Requirement of withholding.—Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978. For purposes of applying such tables, the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table prescribed under subsection (b) (1).

Section 3402 (f)(1): Withholding Exemptions

(1) In general.—An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself;

(B) one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (c)(1) (relating to old age) for the

taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(C) one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption:

(E) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(e) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(F) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(G) a zero bracket allowance which shall be an amount equal to one exemption unless (i) he is married (as

determined under section 143) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For the purposes of this title, any zero bracket allowance under subparagraph (G) shall be treated as if it were denominated a withholding exemption.

Section 3402 (f)(2)(A):

(2) Exemption certificates.—

(A) On commencement of employment.—On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

Section 3402 (m)(1):

(m) Withholding allowances based on itemized deductions.—

(1) General rule.—An employee shall be entitled to withholding allowances under this subsection with respect to a payment of wages in a number equal to the number determined by dividing by $1,000 the excess of—

(A) his estimated itemized deductions, over

(B) an amount equal to $3,400 ($2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2 (a)).

For purposes of this subsection, a fractional number shall not be taken into account unless it amounts to one-half or

more, in which case it shall be increased to 1.

Section 3402 (n):

(n) Employees incurring no income tax liability.—Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisons of subsection (f).

PETITION

JAMES M. HAZELIP, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above action on December 29, 1980, a timely petition for rehearing having been denied on January 29, 1981. (There are no parties to this proceeding other than those named in the caption.)

STATEMENT OF THE CASE

Petitioner was charged in a one-count indictment alleging that on August 30, 1979 he willfully filed a false wage withholding certificate (Form W-4) with his employer, on which he claimed to be "exempt" from withholding, in violation of 26 U.S.C. Sec. 7205. The district court had jurisdiction over the action under 18 U.S.C. Sec. 3231.

The defendant made a pretrial motion to dismiss the indictment on the ground that he was the victim of an impermissible selective prosecution and an evidentiary hearing was held. The defendant filed his Declaration, stating the grounds for his contentions. See Appendix C. At the hearing, the government was ordered to come forward with what statistics it had, and the testimony of Special Agent Alan Lipkin, Appendix D, showed the following: Of 23 local investigations between September of 1979 to May of 1980 for violation of 26 U.S.C. Sec. 7205, 20 involved members of organized tax protest

groups (including "Your Heritage Protection Association" the group to which the defendant belonged; hereafter, "YHPA). Of the 23, 17 were recommended for prosecution. Sixteen were members of protest groups, and the background of the other one was unknown to the witness. Of the 17, prosecution of 3 cases was eventually declined, leaving 14 to be prosecuted, **all of them members** of various protest organizations. The witness had no further statistics. The court denied the motion to dismiss.

The matter proceeded to trial. The defense to the charge was based on two separate theories. First, Mr. Hazelip was definitely entitled to at least 16 "exemptions" on his W-4, which would have effectively — and legally — eliminated further withholding from his paycheck for the period in issue. However, there is considerable confusion as to the meaning of the statute, 26 U.S.C. Sec. 3402, in this setting, which creates undue vagueness about the requirements of the law, a matter discussed in more detail below. The issue though, was whether one who believes he is entitled to "exemptions" sufficient to "exempt" him from further withholding, can be criminally liable for stating "exempt" on the W-4 instead of claiming the "exemptions."

Second, Mr. Hazelip had, coincidentally, joined an organization called "Your Heritage Protection Association," (YHPA) which advocated the view that wages received in Federal Reserve Notes are not taxable, because the notes are not redeemable in gold or silver "dollars" and that the Sixteenth Amendment does not

permit taxation of the "fruits of labor," as distinuished from "passive" or investment income, which could theoretically be taxed.

As an example of the sort of instruction that Hazelip received from YHPA, a letter that had been shown to Hazelip at the YHPA lecture meetings is included in this petition as Appendix E. The letter, from a current United States Senator, speaks for itself. The letter is only a small part of an extensive "education" program that is regularly presented by YHPA to members and the general public alike.

The defendant's theory in this regard was that he was instructed by YHPA that it was legally proper to file an "exempt" W-4 and that he did not therefore "willfully" file a false one. The YHPA program consisted of a slide show and narrative commentary by the group's founder, Mr. Armen Condo.

The jury found Mr. Hazelip guilty as charged, and his conviction was affirmed on appeal, without oral argument. Upon the denial of a petition for rehearing, this petition ensued.

REASONS FOR GRANTING THE WRIT

1. The first question suggested in this petition is whether the indictment should have been dismissed for discriminatory prosecution. The petition is urged for two reasons, first, in its own right, and second, because this Court has recently indicated its willingness to consider the

basis for the legal question involved, in **Flynt v. Ohio,** cert. granted, _____U.S._____, 66 L.E2d 495 (Dec. 8, 1980).

The leading case in federal courts is generally recognized to be **United States v. Berrios,** 501 F.2d 1207 (2nd Cir., 1974). There the Second Circuit laid down a two-pronged test, under which a defendant has the burden of showing (1) that while others similarly situated have not been generally been prosecuted, he has been singled out for prosecution, and (2) that the selection of him for prosecution has been with the desire to prevent his exercise of constitutional rights.

Here, the defendant has demonstrated the essentially "political" nature of his activities, and the government's own statistics showed that only members of "tax protest" **organizations** such as YHPA were being prosecuted.

This Court has held, in **NAACP v. Alabama,** 357 U.S. 449 (1958), in which the First Amendment standard was applied in the state setting:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. **NAACP, supra,** at p. 460.

Hazelip's active **membership** in YHPA is certainly protected by the First Amendment. No one is claiming that filing an "exempt" W-4 is similarly protected — only that if prosecution for filing the W-4 is improperly motivated, then it is barred by the principle announced in the **Berrios** case. Here, the government, although surely possessing the data necessary to show whether similar crimes are committed by persons **not** members of protest groups, did not do so. The data was certainly not within the defendant's power to produce, and the statistical record that **was** produced speaks for itself.

At this point, the record and briefs in **Flynt** are probably before the Court, and the Court is familiar with the issues that must be raised in a discriminatory prosecution case. The petitioner had surmised that this Court may have granted certiorari for the reason suggested by Justice Brown of the Supreme Court of Ohio, in his dissenting opinion in **State v. Flynt,** 407 N.E.2d 15 (1980). Here, the reasons in support of the motion are even stronger than in **Flynt.** This is not a "test case", which could possibly justify the selection of Hazelip as a defendant: many persons are prosecuted for violating Sec. 7205, but they all just happen to be members of organized tax protest groups. Further, the fact that only members of such groups are prosecuted indicates an irrefutable motive to stifle the freedom of association and speech possessed by the members and the group itself.

This case is more compelling than the petitioner's position in

Flynt. For that reason, and for the reason that this is a matter which is raised in virtually every "tax protester" prosecution, and which has not been definitely ruled on by the Court, the petitioner prays that the Court will grant the petition, and will reverse the judgment of the Court of Appeals.

2. The second question presented is whether, under the circumstances of this case, 26 U.S.C. Secs. 3402 and 7205 are vague and ambiguous, and whether holding Mr. Hazelip criminally liable for his behavior would violate principles of due process by failing to adequately provide notice of the requirements of the law.

Mr. Hazelip filed the Form W-4 "exempt" upon which the prosecution was based on August 30, 1979. The testimony in the case showed that Hazelip: (1) purchased a new family home in June of 1979, which entitled him to further exemptions for points and interest, (2) was married to a homemaker who did not maintain another job away from the home, (3) had six children, and had not claimed them as dependants on the original W-4 filed with his employer, (4) had, in previous years, routinely permitted over-withholding by thousands of dollars because he failed to claim the number of exemptions he was entitled to, and (5) had already had $1600.00 withheld from his paycheck by June, 1979.

Hazelip was, under these conditions, entitled to claim at least 16 withholding "exemptions" and by the time he filed the "exempt" W-4 he had unquestionably paid in all of the

withholding tax for which he was liable during the period of time in issue.

However, the "catch" was that one cannot file an "exempt" W-4 unless he had not "incurred a tax liability" for the previous year. He would, however, still be able to claim the "exemptions" he was entitled to. This is clear enough from those portions of 26 U.S.C. Sec. 3402 which are reproduced in this petition.

The next "catch" is that Sec. 7205 makes it a crime to willfully supply information to one's employer that he is required to provide under Sec. 3402. Here, Mr. Hazelip obtained a lawful result by filing the "exempt" W-4, since he really was "exempt" from further withholding based upon the "exemptions" to which he was entitled.

One may well ask why the case was in court in the first place. That is probably best answered by the discussion above, relating to discriminatory prosecution. A wage withholding statement that normally would provide little practical basis for prosecution was elevated to select status because Mr. Hazelip also happened to belong to YHPA, a group which advocates views with which Internal Revenue sharply disagrees. In fact, the YHPA membership was probably the government's primary key to proving "willfulness" in this case.

As applied to this petitioner, who was literally "exempt" from further withholding at the time he filed the suspect W-4, the law which compels his respect should be considered inoperable because it is vague. This Court has interpreted the Due Process Clause of the Fifth Amend-

ment to mean that a criminal statute is void when it is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. **Conally v. General Construction Company,** 269 U.S. 385; **Yu Cong Eng v. Trinidad,** 271 U.S. 500. Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. **Ex parte Webb,** 225 U.S. 663. Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained. **Winters v. New York,** 333 U.S 507. See also, **Lanzetta v. New Jersey,** 306 U.S. 451.

Here, the criminal statute, Sec. 7205, requires reference to Sec. 3402 to find out just what is required of the employee. And that provision, as the Court can readily see, is not a model of simplicity or clarity — partiularly in a case such as this, where a person may be entitled to "exemptions" which will make him "exempt" from further withholding, but is not technically entitled to claim that he is "exempt." Even if the statute were not vague, it would be fundamentally unfair to uphold this conviction.

For the foregoing reasons, the Court should grant the petition for certiorari, and should reverse the judgment of the Court of Appeals.

3. An additional ground is presented, to which it is hoped the Court will give its consideration. Admittedly, lower courts have on occasion found this ground to be "frivolous" or "plainly without merit," but the logarithmic

growth of the tax protest movement requires that this Court consider the underlying theories and provide the guidance that is lacking. One of the defendant's trial exhibits, which was admitted in evidence, is reproduced at Appendix E. It is a letter from former Idaho Congressman (now U.S. Senator) Steve Symms, stating that "the income tax is unconstitutional and was not part of the original intent of those who drafted our Constitution or government. . . " Senator Symms' views are shared by many millions of "tax protestors" in this country. Their theories range from a basic belief in the unconstitutionality of the income tax itself, to creative interpretations of the Internal Revenue Code. Frequently, ancient cases from this Court are cited in support of their contentions. Even some not-so-ancient cases, such as **Don E. Williams Company v. Commissioner of Internal Revenue,** 429 U.S. 569, are cited to prove their contention that Federal Reserve Notes are not legally "notes" at all.

The protest group that Mr. Hazelip belongs to has, at present, about 18,000 members, primarily in Southern California. There are reputed to be millions more protestors nationwide, many of them also members of organizations like YHPA.

The time has clearly come to review the protesters' contentions. The government should confirm the administrative importance of the issue at least as bearing upon the tax-collection function. All of the major "tax protest" theories could be fully briefed and reviewed in this case, because YHPA teaches, and Mr. Hazelip was exposed to

all of them, including the contentions that Federal Reserve Notes are not "notes," are not income because not redeemable in gold or silver, and that the Sixteenth Amendment does not permit taxation of the fruits of one's "labor." And, obviously, if Mr. Hazelip was correct in his legal analysis, he ought to have been acquitted.

CONCLUSION

This case presents the Court a variety of important issues, which often arise in "tax protester" cases. For the reasons stated above, it is respectfully prayed that this Court will grant the petitioner for writ of certiorari and will reverse the judgment of the Court of Appeals for the Ninth Circuit.

DATED: March 30, 1981

Respectfully submitted
CLYDE R. MAXWELL
Counsel for Petitioner and
Member of the Bar of the
United States Supreme Court

"APPENDIX A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC. 29 1980
RICHARD H. DEANE
CLERK U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES M. HAZELIP,

Defendant-Appellant.

NO. 80-1454

MEMORANDUM

Submitted - December 8, 1980

Appeal from the United States District Court
for the Central District of California
Mariana Pfaelzer, District Judge, Presiding

Before: GOODWIN, SNEED and REINHARDT, Circuit Judges

Hazelip appeals from a judgment of conviction following jury trial on one count of furnishing a fraudulent withholding certificate in violation of 26 U.S.C. section 7205. We find appellant's contentions without merit, and thus affirm.

The language of the statute under which he was convicted is plain and its meaning certain. This is not, as Hazelip contends, a case where "men of common intelligence must necessarily guess at its meaning and differ as to its application . . . ." **Connally v. General Construction Co.**, 269 U.S. 385, 391 (1926). Hazelip received adequate warning of what conduct was proscribed. **Sewell v. Georgia,** 435 U.S. 982, 986 (1978).

The argument that Hazelip did not act with the requisite state of mind to merit a conviction was rejected by the jury. We are unable to ignore the evidence supporting the jury finding that he acted "willfully" in failing to comply with the statute.[1] 26 U.S.C. §7205.

Appellant also failed to make out a prima facie case of selective prosecution that would have justified dismissal of the indictment. The trial court was not in error in finding, after an evidentiary hearing on the issue, that Hazelip had failed to prove either that others similarly situated were not prosecuted or that the defendant was selected for prosecution on the sole basis of his association with a tax protest organization. **See United States v. Catlett,** 584 F. 2d 864, 867 (8th Cir. 1978); **United States v. Gardiner,** 531 F.2d 953 (9th Cir.), **cert. denied** 429 U.S. 853 (1976).

Hazelip's final attack on his conviction arises from the

1/ Hazelip was informed twice by his employer, and once by the IRS, that he was not entitled to exempt status. Yet he subsequently submitted another claim of exemption, which led to his indictment.

trial court's failure to give one of his requested jury instructions. It seems clear, however, that this is not a case where "the instructions taken as a whole were misleading or represented a statement inadequate to guide the jury's deliberation." **Stoker v. United States,** 587 F.2d 438, 440 (9th Cir. 1978). The instruction given by the trial judge was proper as it gave adequate guidance to the jury in light of Hazelip's theory of defense. **United States v. Lee,** 589 F.2d 980, 985 (9th Cir. 1979).

The judgment of the district court is AFFIRMED.

"APPENDIX B"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 29 1981
RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	**NO. 80-1454**
v.	)	**ORDER**
	)	
JAMES M. HAZELIP,	)	
	)	
Defendant-Appellant.	)	

Before: GOODWIN, SNEED and REINHARDT, Circuit Judges.

Appellant's petition for rehearing is DENIED.

"APPENDIX C"

DECLARATION OF JAMES M. HAZELIP

I, James M. Hazelip declare:

1. I am the defendant in case number CR 80-344-MRP, presently before the United States District Court for the Central District of California.

2. I am a member of "Your Heritage Protection Association", otherwise known as "Y.H.P.A." and I am informed and believe that this is known by the Internal Revenue Service.

3. I regularly attend meetings of the Y.H.P.A., which are open to the public, and at which theories relating to money and taxes are discussed.

4. I am informed and believe that the Internal Revenue Service is attempting to stifle the freedom of the members and participants at these meetings to exercise their rights of free speech, association and assembly.

5. I am informed and believe that the meetings are closely monitored by the Internal Revenue Service, and that the Service knows of the content of these meetings, as well as the speakers, organizers and participants therein.

6. I have filed a form W-4 with my employer, purporting to exempt me from withholding taxes.

7. I am informed and believe that the Internal Revenue Service knows of many other instances in which forms W-4 are filed with employers, also purporting to exempt the filer from withholding taxes, which the Service knows or has reason to believe the filer is not entitled to do.

8. I am being prosecuted for filing the form W-4 referred to in paragraph 6, above, whereas the Service has failed to prosecute others similarly situated, as alleged in paragraph 7.

9. I am informed and believe that the reason that I, and possibly others in my situation, are being prosecuted, while others that the Service knows of are not, is that the Internal Revenue Service is attempting to stifle the exercise of my rights of free speech and assembly, whereas, those who do not exercise these rights in the manner in which I do are not being prosecuted.

10. I am informed and believe that I am the victim of an impermissible selective prosecution, as alleged herein, and that the Internal Revenue Service has in its possession statistics, memoranda and other documents that would substantiate my claim.

I declare under penalty of perjury that the foregoing is true and correct and that this document was executed on May 20, 1980, at Huntington Beach, California.

James M. Hazelip, Declarant

"APPENDIX D"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

Honorable MARIANA R. PFAELZER, Judge Presiding

— — —

UNITED STATES OF AMERICA,)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
May 28, 1980
PP. 69-73 - MOTION HEARING:
Direct Examination of Special Agent Lipkin
By. Asst. U.S. Atty. Julia Barash

Q. Turning to the second request for discovery, did you attempt to come up with any statistics concerning the number of people that your office investigated for possible 7205 violations and then the number of people prosecuted or recommended to be prosecuted by your office during the last year?

A. Yes.

THE COURT: Read the question back.

(Question read.)

THE COURT: Fine. Go ahead. The answer is yes, you did?

THE WITNESS: Yes.

BY MS. BARASH:

Q All right. What period of time do your statistics relate to?

A Approximately September, 1979, '79 to the present time.

Q What type of statistics were you looking for?

A I was looking for statistics that related to the number of prosecutions that we recommended that related to 7205 violations alone.

Q All right, What did you find?

A I found that during that period of time that our office investigated 23 such cases.

Q This is from what month in 1979?

A September.

Q To the present time?

A Correct.

Q And of the 23 cases you investigated, how many of those 23 cases, if you know, were the type of tax protestor case where the tax protestor, meaning the person who filed this 7205 form, was a member of an organized group of some sort?

A In 16 of those cases. One I have no knowledge of.

Q So 16 of the 23 cases investigated?

A I am sorry, 20 of the 23 were known to be members of some type of a group.

Q Now, do these 23 cases refer to people that had filed

tax exempt W-4 forms only?

A Yes, I believe that's correct.

Q It didn't relate to people that filed just an exorbitant number of allowances?

A Not to my knowledge.

Q So your statistics show that 20 of the 23 cases were people from organized groups?

A Correct.

THE COURT: These were ones that were investigated?

MS. BARASH: Investigated, yes.

THE WITNESS: Correct.

BY MS. BARASH:

Q Now, at the time that your office commenced the investigation, do you have any statistics as to whether your office knew that 20 of the 23 people were members of organized group?

A At the time that we initiated the investigations?

Q Yes

A To my knowledge, I would say approximately 90 percent of the cases that we initiated we had no knowledge if that individual belonged or did not belong to an organized protest group.

Q On what guidelines did you base your initial decision as to whether to investigate these people?

A The guidelines that I mentioned previously.

Q Which had nothing to do with whether they were a member of an organized group?

A That's correct.

Q And of the 23 people, your office recommended prosecution of how many?

A Seventeen people.

Q Do you have any other statistics regarding this matter?

A Yes, I do.

Q What are they?

A Three of the cases that we recommended were declined by the U.S. Attorney's office, leaving 14 cases. All of the 14 cases include members of some type of organized protest.

Q Do you know if of the 14 cases that the U.S. Attorney's office has prosecuted, are they all members of the same group?

A No, they are not.

Q Do you know how many groups are involved?

A There are at least three groups involved.

Q Do you have any other statistics?

A Yes. Of the 23 cases, six of those cases were discontinued for investigation by our office and four of those cases included members of an organized protest group.

Q If you know, upon what factors did you discontinue those cases?

A On the merits of the case. In other words, the evidence didn't support the recommendation for prosecution.

Q All right. Do you have any other statistics that you found?

A I don't believe so.

MS. BARASH: Your Honor, I think that is all I have from this witness at this time.

STEVEN D. SYMMS
1ST DISTRICT, IDAHO

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Dorothy H. Rutledge
151 11th Street
Idaho Falls, Idaho 83401 February 21, 1977

Dear Dorothy:

Thank you for your card concerning jurisdiction over the Internal Revenue Service.

Yes, Congress has complete and total control over the I.R.S., as it has final authority over any government agency. Congress writes tax laws and the I.R.S. interprets and enforces them.

If your are fighting a decision or ruling, that must be resolved with the I.R.S., but if we can assist you in some aspect of the case please let me know.

The income tax is unconstitutional and was not part of the original intent of those who drafted our Constitution or government; I am supporting a resolution to repeal the 16th Amendment.

Again, thank you for writing.

Yours for a free society,

Steve Symms
Member of Congress

SS:js

"APPENDIX E"

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 N. Bush Street, Santa Ana, California 92701.

On March 30, 1981, I served the within Petition for Writ of Certiorari on the interested parties in said action, by placing a true copy in each of two envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

WADE McCREE
Solicitor General
Department of Justice
Washington, D.C. 20503

ANDREA S. ORDIN
U.S. Attorney
c/o Julia Barash
Asst. U.S. Attorney
312 N. Spring St.
Los Angeles, CA 90012

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on March 30, 1981, at Santa Ana, California.

Jack Gallagher